No. 13400

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 504, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for the enforcement of its order issued against International Association of Machinists, Local No. 504, respondent herein, on September 28, 1951, pursuant to Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151, *et seq.*).[1] This Court has jurisdiction under Section 10 (e) of the Act, the unfair labor practices having occurred in Sunnyvale, California, within this judicial circuit.

[1] The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 18–22.

The Board's decision and order (R. 80–95) are reported in 96 N. L. R. B. 522.

STATEMENT OF THE CASE

I. The Board's findings of fact and conclusions of law

The Board found that, in violation of Section 8 (b) (2) and (1) (A) of the Act, respondent Union caused the Westinghouse Electric Corporation (Sunnyvale Plant), hereinafter called the Company,[2] to discharge an employee pursuant to a union-security agreement, because the employee, previously expelled from the Union, did not pay a fine which the Union imposed upon him and which was the condition for his restoration to union membership. The subsidiary facts may be summarized as follows:

A. Scheuermann's expulsion from the Union

Clyde Scheuermann, an employee of the Company and its predecessor for approximately eight years, was a member of respondent Union from the time of its advent to the plant as exclusive bargaining representative (R. 55; 109–110, 169–170, 278–279). Shortly before the expiration of a closed-shop agreement between the Company and respondent on April 1, 1949, Scheuermann organized another union among the em-

[2] Westinghouse Electric Corporation is a Pennsylvania corporation maintaining its principal offices at Pittsburgh, Pennsylvania, and operating plants throughout the United States, including a plant at Sunnyvale, California. At this plant it is engaged in the manufacture of electrical and steam equipment. During the course of its operations it makes substantial purchases and sales outside the State of California (R. 19; 4, 107). Jurisdiction is not contested (R. 107).

ployees, the Independent Westinghouse Workers Union (IWWU). He became its first president and actively participated in a campaign to oust the respondent Union as the employees' representative (R. 20–21, 50; 110, 170–175).

On March 4, 1949, during the IWWU's organizing campaign, respondent notified Scheuermann that he had been charged with "dual unionism" in violation of the International constitution and would be required to stand trial for the offense (R. 50–51; 114, 116–118, 389).[3] A trial committee sustained the charge against Scheuermann and, after ratification of its decision by respondent's membership, notified him by letter on March 22, 1949, that he had been expelled from membership and fined $500 (R. 51, 82; 119, 256). On May 12, 1949, Scheuermann was notified that respondent's action had been approved by the Executive Council of the International (R. 52–53; 120).

In the meantime, however, during the latter part of March, Scheuermann attempted to pay his dues to Shop Steward Smiley, who refused them saying, "I can't take dues from you. I have been told not to" (R. 54–55, 82; 122, 193–194, 438). Shortly thereafter

[3] Art. XXV, Sec. 2 of the Constitution of the International Association of Machinists provides as follows:

"Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement or who violate the provisions of the Constitution of the Grand Lodge or the Constitution for Local Lodges * * * shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both" (R. 383).

another shop steward, Nunez, accepted this payment of dues and on March 31 remitted it to the union treasurer (R. 55; 121, 194, 438–439). Scheuermann made a final payment of dues at the Union office on May 2 (R. 55; Resp. Union Exhib. 7). All these payments were returned to Scheuermann by respondent on June 3, 1949, with a letter advising him that because he had been officially expelled from membership and fined $500, he was "therefore not a member of the International Association of Machinists" and dues could not be accepted from him (R. 55–56, 82; 121–123).

B. The representation and union-shop elections and subsequent contract negotiations

Meanwhile, on April 1, 1949, respondent's contract with the Company expired (R. 52; 279, 311). Thereafter on June 13, 1949, the Board directed that an election be held which would determine whether the Company's employees wished to continue respondent Union as their choice, or select the recently organized IWWU (R. 56; 325). At the election held on July 7, 1949, respondent won and was again certified as the statutory bargaining representative (R. 56; 157–158). The IWWU disbanded shortly thereafter (R. 56; 174–175).

In August 1949 respondent and the Company began negotiations for a new agreement (R. 56; 281–282). On August 25 a majority of the employees voted in a Board-conducted election to authorize respondent Union to negotiate a union-shop contract with the Company (R. 56; 141, 158). The results of this election were certified by the Board on September 7,

1949 (R. 57; 142, 282).[4] Meanwhile negotiations progressed satisfactorily, and by the end of September substantial agreement had been reached between the parties (R. 57; 155, 282). The final agreement was officially ratified by respondent's membership at a special meeting on October 9, 1949, and was formally executed on the following day (R. 57; 281, 390).

The agreement included a union-security provision requiring that all employees in the bargaining unit, as a condition of their continued employment by the Company, be or become members of respondent Union within thirty days after the effective date of the agreement.[5] Copies of the agreement, although not

[4] Recent amendments to the Act now make such an authorizing vote of the employees unnecessary. Public Law 189, 82d Cong., 1st Sess.

[5] The full text of the union-security provision of the agreement is as follows:

"SECTION II—UNION SECURITY

"A. All employees in the bargaining unit described in Section I shall on and after the thirtieth day following the beginning of their employment, or October 10, 1949, whichever is the later, become and remain members of the Union, as a condition of their employment during the life of this agreement, and the Union shall notify the Company promptly in writing of the failure of any such employee to become or remain a member of the Union; provided, however, that the Union shall not request the company to discriminate against any employee for nonmembership in the Union if such membership is not available to the employee on the same terms and conditions generally applicable to other members or if membership is denied or terminated for reasons other than the failure of the employee to tender the periodic dues or initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership" (R. 57; 282, 126).

The foregoing provision from the collective bargaining agreement is printed here because the printer inadvertently omitted it

posted, were given immediately to all Company supervisors and Union stewards (R. 58; 284). The Board found that Scheuermann was familiar with the union-security provision of the agreement (R. 59–60).

C. The nature of Scheuermann's union status at the time of his discharge

As previously stated (*supra,* pp. 3–4), Scheuermann had made a number of attempts to pay his union dues after his expulsion, but on each occasion his tender was rejected (R. 53–55, 82–83; 121, 192–194, 438). Another employee, Leslie Ollis, who had also been fined and expelled from the Union at the same time as Scheuermann, and for the same reasons, had also sought to pay his union dues and had likewise been refused (R. 53–55, 84–85; 142, 150, 152–153, 157, 241, 256, 375, 389–390). Between April 1 and October 10, however, neither Ollis nor Scheuermann were under any obligation to seek or maintain union membership as a condition of continued employment because no union-security agreement was in force (R. 68; 280). Ollis' final attempt to pay his dues occurred shortly after the execution of the union-security agreement (R. 83; 145–146, 150–151). This time, in the presence of Scheuermann and two other employees, he asked Union Steward Smiley to accept his union dues (R. 60–61, 83; 142–145, 150–152, 160, 448). But Smiley, who had previously refused Scheuermann's offer of payment (*supra,* p. 3), replied, "You know

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from the printed record. The agreement was introduced into evidence as General Counsel Exhibit 1–j appendix A, and the portion quoted above was included in the Board's designation of parts of the record to be printed.

I can't take dues from you guys" (*ibid.*).[6] Ollis was laid off by the Company shortly thereafter, and accordingly the terms of the union-security agreement were not invoked against him as they were against Scheuermann (R. 60; 145, 151, 160).

D. The discharge of Scheuermann

On November 11, 1949, immediately following the expiration of the thirty day grace period specified by the union-security agreement for the acquisition of membership, respondent's business agent, Franklin Gorham (R. 197), met with the Company's industrial relations manager, B. H. Goodenough (R. 62; 196, 286). He presented the manager with respondent's written request that the Company terminate Scheuermann's employment because he had failed to comply with the union-security provision of the agreement

[6] Ollis' account of this incident was as follows:

"I offered to pay dues to Smiley at that time and I offered, I believe I phrased it, that we were willing to pay dues at any time, or possibly I said I am willing to pay dues, but I recall very definitely Smiley saying, as he had said before, 'You know, we don't want any dues from you guys' " (R. 151).

Scheuermann's testimony was in substantial accord, thus:

"There was an incident of kidding about 'free riders.' It perturbed Ollis and he said, 'How about it, Smiley? How about taking some dues now?' Smiley said, 'You know I can't take dues from you guys.' There was some bantering and that was the end of it" (R. 144).

Employee Nelson, whom the Trial Examiner found to be one of the most disinterested witnesses to the incident, testified that Ollis, in the presence of Scheuermann, "offered to pay dues," and that "Smiley's stand was the same every time; that under the I. A. of M.'s business laws there was a fine imposed and he couldn't pay them. He couldn't accept the dues" (R. 61; 445). However, Nelson could not remember the exact conversation (R. 448).

(R. 62, 83; 286, 314–315, 392–393).[7] Gorham assured Goodenough that Scheuermann and the other employees whose discharges were requested "had been given the same opportunity to join the Union as all other employees under the jurisdiction of the IAM," and that the request for their discharges complied with both Section 2 of the agreement and the National Labor Relations Act (R. 62; 287, 315). Gorham later confirmed these assurances in a letter dated November 15, 1949, in which he stated that "all of those listed in this letter for termination were given the same opportunity to become members of our organization as anyone else working in [the] plant" (R. 63; 289, 393).

When Scheuermann reported for work on November 11, he was sent directly to Mechanical Superintendent John J. McAuliffe who read him respondent's request for his discharge and the pertinent provisions of the agreement upon which the discharge was requested (R. 63, 83; 8–9, 123–124, 126, 176–177, 326, GC Exhibit 1–J, Appendix A, Sec. 2). After reading both the letter and the contract Scheuermann protested to McAuliffe, "I don't think this applies to me. * * * Because I feel mine is a special case"

[7] The text of respondents request is as follows:

"We are requesting Westinghouse Electric Corporation, Sunnyvale plant, to terminate the employment of Louis G. Gennai, Cleveland A. Norris and Clyde W. Scheuermann for failure to comply with Section 2 of the Agreement between Westinghouse Electric Corporation, Sunnyvale plant, and District Lodge #93, International Association of Machinists" (R. 125).

The name of Gennai had been deleted as an error (R. 124, 290–291, 426); Norris terminated his employment for other reasons (R. 292).

(R. 63; 126–127, 178). He then explained to McAuliffe that it had been impossible for him to comply with the union-security requirements for the reason that he had been fined and expelled from the Union (R. 63; 178). After further discussing the applicability of the contract McAuliffe again referred to respondent's request and the Company's decision to grant it, and gave Scheuermann his discharge papers (R. 64, 83; 128–129).

E. Scheuermann's final attempt to secure reinstatement to union membership

Following his discharge Scheuermann again sought to be reinstated in the Union as an incident to regaining his employment. On November 14 he went to respondent's office and spoke with Business Agent Scott on the matter (R. 64, 83; 129–130, 199). When Scheuermann told Scott he "was out to * * * see what we could do about my being laid off at Westinghouse," Scott replied, "Yes, Clyde, I think we can do something. You pay your back dues and your new initiation fee and the $500 fine" (R. 64–65, 83; 132, 189–190). Scott thus made it clear to Scheuermann that unless the fine, as well as the back dues, were paid he could not be restored to good standing in the Union. Scott's decision comports with the terms of the Union's constitution which require that an expelled member pay a reinstatement fee, and that his "reinstatement shall not be effected * * * until * * * the fines and assessments are either remitted or paid in full" (R. 85; 384, 388). Scott, however, disclaimed knowledge of the details of Scheuermann's case and suggested that he see Business Agent Gor-

ham who had made the original charges against him and had procured his discharge (R. 65; 133, 190, 456). Gorham conferred with Scheuermann on the following day, but refused to accept his application for reinstatement in the Union (R. 66; 135–136, 190–191, 406). He explained that his refusal was dictated by the Union's policy not to accept membership applications from applicants who, like Scheuermann, were unemployed (R. 66; 395, 404).

F. The Board's conclusions

The Board found that respondent requested the Company to discharge Scheuermann pursuant to the union-security agreement because Scheuermann had failed to pay the fine imposed on him by respondent for engaging in dual union activity (R. 82–87). The Board's conclusion was based on the circumstances that: (1) Scheuermann's several tenders of dues after his expulsion from membership in the Union were rejected because of his non-payment of the fine (R. 86); (2) during the period that the union-security agreement was in effect, in Scheuermann's presence, another employee, who had been expelled with Scheuermann from the Union for the same reason, tendered dues to the Union, but his tender was rejected (R. 83, 86); (3) after Scheuermann's discharge pursuant to the union-security agreement, the Union advised him that his restoration to membership in good standing was conditioned upon his paying the fine (R. 85–86); and (4) the Union's constitution requires that no expelled member shall be reinstated until his "fines and assessments are either

remitted or paid in full," and the Union had indicated no intention to remit the fine against Scheuermann (R. 86).

The Board concluded that, under Section 8 (a) (3) and 8 (b) (2) of the Act, a union-security agreement may be lawfully invoked to cause the discharge of an employee only for his failure to tender his periodic dues and initiation fees, and accordingly that respondent Union, in invoking the union-security agreement, to cause the discharge of an employee for his failure to pay a union fine,[8] violated Section 8 (b) (2) and (1) (A) of the Act (R. 87).[9] The Board further concluded that it was immaterial that Scheuermann had not tendered the periodic dues and initiation fees during the thirty-day period prescribed by the union-security agreement for acquiring membership because the Union had shown "by affirmative conduct and statements that tender would not have stayed its request for discharge," and it was not incumbent upon Scheuermann to make a tender "where the circumstance indicate that such a tender would have been a futile gesture" (R. 86).[10]

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[8] Since the Union's action was based on non-payment of the fine, the Board assumed, without passing upon the question, that the Union could lawfully require Scheuermann to tender a second initiation fee (R. 86, n. 7). Accordingly, this requirement is not in issue here.

[9] The Board, with one Member dissenting (R. 95–96), dismissed the complaint with respect to the Company, because the Company "had no reasonable grounds for believing that the Union's request was for reasons" other than those permitted by the Act, and therefore it had not discriminated against Scheuermann in violation of Section 8 (a) (1) and (3) (R. 87–89).

[10] Two members of the Board dissented from this conclusion (R. 97–99).

II. The Board's order

The Board's order (R. 92–95) requires respondent to cease and desist from causing or attempting to cause the Company to discharge or in any other manner to discriminate against the employees in violation of the Act, and from restraining and coercing employees of the Company in the exercise of their rights guaranteed by the Act. Affirmatively, respondent is required (a) to make whole Clyde Scheuermann for any loss of pay he may have suffered as the result of discrimination;[11] (b) to notify the Company in writing that it withdraws its objection to the employment of Scheuermann, and that it requests the Company to offer him reinstatement to his former position; (c) to notify Scheuermann that it has withdrawn its objection to his reemployment and requested his reinstatement; and (d) to post appropriate notices of compliance with the Board's order.

SUMMARY OF ARGUMENT

Based on substantial evidence on the record considered as a whole, the Board reasonably found that respondent caused the discharge of Scheuermann pursuant to a union-security agreement because of his failure to pay a fine; that any tender of dues or initiation fees by Scheuermann would have been a futile

[11] The Trial Examiner in his Intermediate Report recommended the dismissal of the complaint with respect to respondent as well as the Company. Accordingly, the Board, in reversing the Trial Examiner and finding violations as to respondent, has excluded from the computation of back pay due to Scheuermann the period from the date of the Intermediate Report to the date of the Board's order (R. 90).

act which he was not obligated to make; and accordingly, that respondent violated Section 8 (b) (2) and (1) (A) of the Act.

ARGUMENT

The Board properly concluded that respondent, by invoking the union-security agreement to cause the discharge of employee Scheuermann because of his nonpayment of a fine, violated Section 8 (b) (2) and (1) (A) of the Act

Under Section 8 (a) (3) and (b) (2) of the Act, a union-security agreement may be invoked to cause the discharge of an employee for nonmembership in a union only if the employee fails to tender periodic dues and initiation fees. *Union Starch and Refining Co.* v. *N. L. R. B.,* 186 F. 2d 1008 (C. A. 7), certiorari denied, 342 U. S. 815. In the statutory language, if nonmembership is "for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring membership," a discharge may not be validly based on such lack of membership. A fine imposed by a union is clearly not within the class of "periodic dues and initiation fees;" hence it is discriminatory to invoke a union-security agreement against an employee because of his failure to pay a fine. *Electric Auto-Lite Co.,* 92 N. L. R. B. 1073, enforced, 196 F. 2d 500 (C. A. 6). Indeed, in the case at bar the fine was imposed because the employee engaged in dual union activity. Yet a principal reason inducing Congress narrowly to circumscribe the enforceability of a union-security agreement was to permit an employee to engage in activity on behalf of a rival union without risk of reprisal. S. Rep.

No. 105, 80th Cong., 1st Sess., 21–22; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 44. Accordingly, inasmuch as respondent invoked the union-security agreement against employee Scheuermann because he failed to pay a fine, respondent violated Section 8 (b) (2) of the Act. By the same token, respondent also violated Section 8 (b) (1) (A) of the Act, for it, in conjunction with Section 7, prohibits a labor organization from restraining or coercing an employee in the exercise of his right to refrain from union-membership and activity, and this right may be abridged only through the valid enforcement of a union-security agreement.

The question, therefore, narrows to whether substantial evidence on the whole record supports the Board's finding that, "in asking the Company to discharge Scheuermann ostensibly because he failed to tender dues and initiation fee, the Union in reality asked for and obtained Scheuermann's discharge because of his nonpayment of the fine, a reason which the Act does not countenance" (R. 86). Because of his "dual unionism," Scheuermann was expelled from the Union and fined $500 (*supra,* p. 4). Before entry into the union-security agreement, Scheuermann's tender of dues was twice rejected by the Union (*supra,* pp. 3–4). Another employee, Ollis, expelled from the Union at the same time as Scheuermann, and for the same reason, likewise had his tender of dues refused (*supra,* p. 6). Thereafter, during the thirty-day grace period prescribed by the union-security agreement for the acquisition of union membership, Ollis again sought to pay his dues, but,

as before, in Scheuermann's presence, the Union's steward rejected the tender, explaining "you know I can't take dues from you guys" (*supra,* pp. 6–7). After his discharge, Scheuermann asked the Union's business agent, Scott, "what we could do about my being laid off," and Scott replied, "I think we can do something. You pay your back dues and your new initiation fee *and the $500 fine"* (*supra,* p. 9). [Emphasis supplied.] Finally, in refusing to accept a tender of dues without payment of the fine as sufficient to effect Scheuermann's restoration to good standing, the Union was acting in strict conformity with its constitution providing that "reinstatement shall not be effected * * * until * * * the fines and assessments are either remitted or paid in full" (*supra,* p. 9). The action of the Union's officials is consistent only with the conclusion that the Union was unwilling to forgive the fine but was requiring that it be "paid in full."

Accordingly, the Board reasonably concluded that the Union invoked the union-security agreement against Scheuermann, not because he failed to tender dues and initiation fees during the thirty-day grace period prescribed by the agreement for acquiring union membership, but because he had not paid the fine assessed against him. Scheuermann's tender of dues had been uniformly rejected before entry into the agreement; during the thirty-day period of the agreement another employee, who was in the same situation as Scheuermann, had his tender rejected in Scheuermann's presence; after Scheuermann's discharge, the Union expressly specified payment of the

fine as necessary to his restoration to good standing; and the Union's action was consistent with the course prescribed by its constitution.[12] It was the collection of a fine, not of dues, which motivated the Union in causing Scheuermann's discharge pursuant to the union-security agreement.

Respondent Union contends, however, that even if it would not have accepted Scheuermann's tender of dues, he was nevertheless obligated to make it during the thirty days specified by the agreement, and he failed to do so. But, as the Board properly found (R. 86), there is no obligation to tender dues "where such a tender would have been a futile gesture." Since the evidence clearly shows that it was the payment of the fine which was the decisive consideration to the Union, it cannot insist upon the formal fulfillment of a condition which in any event would not have satisfied it. The "law compels no man to do a useless act." [13]

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[12] It is clear that the events preceding and following the thirty-day grace period, no less than those occurring during the period, are relevant in ascertaining the reason for the Union's conduct. Cf. *N. L. R. B.* v. *Wallick & Schwalm Co.*, 30 LRRM 2529, 2533 (C. A. 3, August 1, 1952); *Angwell Curtain Co.* v. *N. L. R. B.*, 192 F. 2d 899, 903 (C. A. 7). The only sound rule in limiting the use of the past and future in determining motive is the rational probative force which is evinced in the circumstances.

[13] *Mayne's Case*, 5 Coke, 20 b. Compare the contract rule that where the promisor is himself the cause of the failure to perform a condition, he cannot set up such non-performance as a defense. *Tradewell Foods, Inc.* v. *N. Y. Credit Men's Adjustment Bureau, Inc.*, 179 F. 2d 567, 568 (C. A. 2); *Williston, Contracts*, Rev. Ed., Secs. 676, 677, 698a, 832, 1293a, 1298; 17 C. J. S., Contracts, Sec. 468b.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue enforcing the order in full.

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SEPTEMBER 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V. Sec. 151, *et seq*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * *

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8

(a) of this Act as an unfair labor practice), to require as a condition of employment, membership therein on or after the thirtieth day following the beginning of such employment, or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (*ii*) *if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement.*[1]

* * * * *

Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

SEC. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7;

* * * * *

(2) To cause or attempt to cause an employer to discriminate against an employee in

[1] The italicized portion has been eliminated by amendment since these proceedings were instituted, see pp. 21–22, *infra.*

violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than has failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise;

* * * * *

SEC. 10. (c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

* * * * *

SEC. 10. (e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate tem-

porary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

* * * * *

Sec. 18.[2] * * *

* * * * * *

Sec. 18. (b) Subsection (a) (3) of section 8 of said act is amended by striking out so much of the first sentence as reads " ; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:" and inserting in lieu thereof the following: "and has at the time the agreement was made or within the preceding

[2] Section 18 was created by Public Law 189, 82d Cong., 1st sess., enacted October 22, 1951.

12 months received from the Board a notice of compliance with section 9 (f) (g), and (h) and (ii) unless following an election held as provided in section 9 (e) within 1 year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:"

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